IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No.1687 of 2007

Yogesh Ishwar Pai ..Applicant.

Vs.

The State of Maharashtra ..Respondent.

Mr A.P. Mundargi, Sr. Counsel with Ganesh Gole for the applicant.

Mr Y. S. Shinde, APP for the State.

ALONGWITH

CRIMINAL APPLICATION No. 2116 of 2007

Rachana Yogesh Pai. ..Applicant.

Vs.

State of Maharashtra. ..Respondent.

Mr A.P. Mundargi, Sr. Counsel with Niranjan Mundargi & S. R. Mithare for the applicant.

Mr Y. S. Shinde, APP for the State.

CORAM: V.C. DAGA,J.

DATED: 19TH JULY, 2007.

P.C.:-

1. Heard rival parties.

2. Perused applications.

3. The applicants in both the bail applications preferred under Section 439 of the Criminal Procedure Code, are original accused Nos. 1 and 2 (Rachna and Yogesh) in C.R. No. 282 of 2006 registered at D. B. Marg Police Station for the offence punishable under Sections 302, 201 read with Section 34

of the I.P.C.

4. Considering the submissions advanced, based on more or less common facts and on consensus, both these applications have been heard together and are being disposed of by this common order.

FACTS:
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5. The present applicant Nos. 1 and 2 are husband and wife and reside in Flat No.A-11, 3rd Floor, Model House, Grant Road, Mumbai-4. Applicant No.2's brother by name Sudesh Ishwar Pai was residing on the 4th floor at Flat No.A-3, who expired on 26.12.2006, when he was under arrest.

6. The applicant Nos. 1 and 2 had engaged one Locan @ Munna Yadav ("Munna" for short) who worked as their full time domestic servant. The death of domestic servant Munna, following multiple wounds led to the registration of crime in the present case against the applicants Yogesh, his wife Rachna and deceased brother Sudesh.

7. The deceased accused Sudesh had disclosed that he had heard shouts of Rachna

staying on the 3rd floor and screaming at the top of her voice and that he saw Munna coming out of the residence of the applicant-Yogesh with two knives in his hand holding his abdomen with his left hand and that Rachna had reported to him that Munna had attempted to open the cupboard with the keys and when caught red handed he had assaulted her with a baton and thereafter Munna rushed to the kitchen, returned with two knives in his hand and injured himself. Rachna had further disclosed to him that she had sustained minor injuries on her right hand due to assault made by Munna.

8. After registration of crime as stated hereinabove, during the course of investigation, police detected the following incriminating circumstances:

a] The flooring of the flat seemed to be wiped, however, blood stains were found under the cupboard, in the centre of the bedroom, walls of the bedroom, in the passage leading to the main entrance, in the waste bin kept in the kitchen and on the wall of the staircase where Loken Yadav was allegedly found collapsed;

b] Washing cloth duster containing traces of blood, a washed white napkin;

c] Sandals of applicant, Yogesh Pai carrying traces of blood;

d] No cut marks corresponding to the injuries on the body of Loken Yadav were found on the clothes of the deceased Loken Yadav.

e] that there was contradiction in the statements of the witnesses given in C.R.No. 277 of 2006.

SUBMISSIONS:

9. According to Mr Mundargi,learned senior counsel appearing for the applicants, the present case is based on circumstantial evidence, as there is no eye witness to the said event and that there is no direct or indirect material on record to implicate the present applicants in the said case. He submits that the applicant no.1, in fact, was not present on the spot when the alleged incident had occurred. That his bail application came to be erroneously rejected by the Court of Session relying upon the

statements of two prosecution witnesses; namely, Sanjay and Sadan. According to him, they do not implicate the applicant Yogesh, in any manner, with the alleged offence. He thus, submits that Yogesh is entitled to be enlarged on bail.

10. So far as the accused no.1-Rachna is concerned, the submission of learned senior counsel is that the applicant is innocent and that the charge under Section 302 of the I.P.C. has been falsely slapped upon her. He, alternatively, submits that assuming for the sake of argument, accepting the prosecution case as alleged, same in any event would not fall within the ambit of Section 302 of the I.P.C. That the unfortunate event must have been occurred, as a result of self-defence. It is also sought to be canvassed that load cover Exhibits serial nos. 11 and 13 in C.A. report show that the semen was detected on the same which fortifies that the deceased must have come with intention to sexually assault the applicant-accused no.1 Rachna and the alleged incident must have occurred while the applicant was trying to defend herself. It is further sought to be canvassed that the applicant is lady, having

five years son who is of a tender age and is suffering tremendous mental shock after the incidence and that he is presently suffering from chicken pox and fever requiring parental care. Since parents are in custody, the applicant accused no.1 Rachna needs to be enlarged on bail. He further submits that investigation is complete, there is no possibility of her jumping the bail or tampering with the prosecution evidence as such her application needs to be considered sympathetically.

11. Per contra, learned APP for the State urged that Mr Yogesh and the deceased Sudesh were not only parties to the murder of Munna but they went to the extent of destroying the evidence of murder. If bail is granted to the accused no.2 Yogesh, it would seriously affect the prosecution case. That the possibility of pressurising witnesses who are from the same locality cannot be ruled out.

12. Learned APP while opposing prayer made on behalf of the accused no.1 Rachna is concerned, he strongly opposed the same and urged that merely because she happens to be woman, she is entitled for favourable

consideration. He submits that ample material is available on record to establish her nexus with the offence alleged. Thus, both applications were strongly opposed by the prosecution.

CONSIDERATION:

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13. Having heard both the sides and having seen two orders rejecting bail applications passed by the Sessions Court; wherein the facts in details leading to the crime with the incriminating material available on record are discussed and taken into consideration which corroborate with the material available on record. I have to find out whether applicants are entitled for bail pending trial.

14. The law with regard to grant of bail is well settled. In the case of **Niranjan Singh v. Prabhakar, A.I.R. 1986 S.C. 785, the Supreme Court** has observed:-

> "Detailed examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications.No party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in the order itself."

15. In the light of above law let me turn to the case in hand.

16. The nature of injuries available on record are as under:

a] Incised lacerated wound about 2 c.m. x 5 c.m. over the right side of the abdomen over the umbilical cord.

b] Incised wound 2 c.m. x 3 c.m. x 0.5 to 1 c.m. above the umbilical cord on the left side.

c]Incised wound (I.N.S.) longitudinal in midline (above umbilical cord) about 4 to 5 c.m. x deep full thickness of abdominal wall with omentum (cover of intestine) pounting out.

d]Incised wound 2 to 3 c.m. near the left side of the umbilical cord.

e]Incised wound about 1 to 2 c.m. x 1 c.m. x 1‘ c.m. just below the umbilical chord right side.

Injuries on throat:

f] Incised wound on throat 4 to 5 cm long superficial.

17. The opinion of the Medical Experts Dr.

Warma and Dr.Bhagwat is that the multiple stab injuries over the abdomen and neck may not be possible due to self infliction.

18. The post-mortem was conducted on 28.11.2006 by teams of doctors attached to J.J. Post-mortem Centre. External injuries mentioned in the column no.17 are particularly in two incised wounds and eight abrasions. Doctors have also observed that certain sutured injuries in all six and those injuries in detail are mentioned in post-mortem report. However, it is clear that all of them were seen stab injuries and were found to be sutured by the doctors who conducted post-mortem.

19. If the above injuries in the light of incriminating material extracted in para 8 (supra) are taken into account, then the prima facie; involvement of the accused no. 1 and 2 in the commission of offence can not be ruled out though, at this stage, it is very difficult to come to any conclusion, much less to say that the person committing theft; even if caught red handed; would inflict such serious injuries on his person by his own hands; which are not less than six incised

wounds including wounds on abdomen and one near the neck.

20. Mr Mundargi, learned senior counsel made a plea that accused no.1 Rachna being a woman having a minor child, should be released on bail. Needless to mention that the said consideration would hardly be relevant while considering the serious and heinous offence alleged against the applicants.

21. Considering, prima facie, material available on record to connect both the applicants with the offence alleged and the gravity thereof together with the apprehension expressed by the prosecution, I do not think that this is a fit case for grant of bail to either of the applicants.

22. In the circumstances, for the reasons recorded herein as well as already recorded by the Sessions Court in the earlier order while rejecting the bail application, the present applications moved by both the applicants stand rejected and disposed of accordingly.

Sd/-
(V.C. DAGA,J.)